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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of KELY BORGES
CARVALHO and RICKY LEE PHILLIPS

RICKY LEE PHILLIPS,

Appellant,

v.

KELY BORGES CARVALHO,

Respondent.

B214701

(Los Angeles County
Super. Ct. No. SD025890)

APPEAL from a judgment of the Superior Court of Los Angeles County. David J. Cowan, Judge. Affirmed.

Ricky Lee Phillips, in pro. per., for Appellant.

Gipson Hoffman & Pancione and Gregory A. Fayer for Respondent.

Appellant Ricky Lee Phillips (Phillips) appeals from a judgment of dissolution of his marriage to respondent Kely Borges Carvalho (Carvalho). Phillips contends the judgment must be reversed because the trial court improperly denied his request for a statement of decision; the trial court erred by failing to divide the community assets between the parties; Carvalho committed perjury and concealed community assets; various discovery abuses and procedural irregularities denied him his due process right to a fair trial; and the superior court clerk's delay in forwarding his notice of appeal constituted prejudicial error. We affirm the judgment.

BACKGROUND

Phillips and Carvalho met in early 2006 and were married on December 2, 2007. The parties separated in February 2008, and Carvalho filed a petition for dissolution of the marriage and a request for a restraining order against Phillips on February 28, 2008. Phillips did not oppose the restraining order request, and a restraining order requiring him to stay at least 100 yards away from Carvalho and her coworkers was entered after a March 21, 2008 hearing on the matter.¹ In his response to the petition for dissolution of marriage, Phillips contended the parties were never legally married and that the marriage was either void or voidable as the result of fraud.

After two continuances, the trial was held on October 23, 2008. Phillips contested Carvalho's request for dissolution of the marriage, arguing instead that the marriage should be nullified as the result of Carvalho's fraud. Phillips contended that Carvalho fraudulently entered into the marriage for the sole purpose of obtaining permanent resident status. Phillips and Carvalho both testified, as did witnesses called by each of them. After hearing argument from both parties, the trial court denied Phillips's request to nullify the marriage, finding that Phillips did not meet his burden of proving fraud, and granted Carvalho's request to dissolve the marriage based on irreconcilable differences.

¹ The restraining order was apparently vacated in 2009 and is not a subject of this appeal.

Phillips filed a motion for new trial and a request for statement of decision. The trial court denied the request for a statement of decision as untimely and denied the motion for a new trial. This appeal followed.

DISCUSSION

I. Request for Statement of Decision

Phillips contends the trial court improperly denied his request for a statement of decision. Under Code of Civil Procedure section 632, a request for a statement of decision “must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision.” The trial in the instant case was concluded within one calendar day -- on October 23, 2008.² Although Phillips claims he made an oral request for a statement of decision at the trial before the case was submitted, there is no evidence in the record to support this claim.

Phillips elected to proceed on a clerk’s transcript, commonly known as an appeal “on the judgment roll.” (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083.) The appellate record accordingly does not include a reporter’s transcript of the October 23, 2008 trial. (Cal. Rules of Court, rule 8.121.) When an appeal is “on the judgment roll” the reviewing court must conclusively presume evidence was presented that is sufficient to support the trial court’s findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)³ The only evidence of a request for a statement of

² By our own motion, we augment the record to include the minute order dated October 23, 2008, the date of the trial. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

³ We decline Phillips’s request that this court “order a complete oral record of [the] trial” in order to augment the record on appeal. (See *Russi v. Bank of America National Trust & Savings Assn.* (1945) 69 Cal.App.2d 100, 102 [there is no absolute right to record

decision is Phillips's written request filed on October 31, 2008 -- more than a week after the matter was submitted for decision. Phillips's request was thus untimely, and the trial court's denial of that request was not error. (Code Civ. Proc., § 632.)

II. Request to Nullify Marriage

Phillips challenges the trial court's determination that he did not meet his burden of proving fraud as the basis for declaring the marriage a nullity. We review the trial court's factual findings in support of the judgment under the substantial evidence standard. (See *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.) Under this standard, we examine the "evidence in the light most favorable to the prevailing party and giving that party the benefit of every reasonable inference [citation]." (*In re Marriage of Catalano* (1988) 204 Cal.App.3d 543, 548.)

There is substantial evidence to support the trial court's implied finding that Carvalho entered into the marriage in good faith. Carvalho presented evidence, consisting of letters and testimony by friends and coworkers attesting to the authenticity of the marriage and of Carvalho's desire and intent to enter into the marriage. She also presented evidence of Phillips's abusive behavior during the marriage and of her fear for her personal safety. Substantial evidence supports a finding that the parties entered into the marriage in good faith.

III. Request for Division of Property

Phillips contends the trial court erred by ignoring his request for a division of the community assets, and that he is entitled to receive reimbursement for payments he made toward a BMW vehicle registered in Carvalho's name but jointly owned by the couple, as well as his share of a \$5,000 income tax refund Carvalho failed to disclose on her declaration of assets and debts.

Carvalho claims that Phillips orally waived his request for division of community assets during the trial. Carvalho's claim is substantiated by the following statements

augmentation, and the augmentation procedure is not a remedy for negligent record preparation].)

made by Phillips in his motion for a new trial: “Throughout the entirety of these proceedings I have never sought monetary gain which I was justly entitled to. I could have, with just cause, petitioned for a 50% or 100% set aside judgment with regards to the \$5,000 that was transferred to a hidden account by CARVALHO, but I did not pursue this avenue. I could have argued that reimbursement for my half of the BMW payments is necessary, I did not.” Phillips waived his request for a division of the community assets. (See *Estate of Westerman* (1968) 68 Cal.2d 267, 279 [issues not raised in the trial court cannot be raised for the first time on appeal].) In view of Phillips’s waiver of any claim for a division of community assets, we need not address his assertions that Carvalho committed perjury by allegedly failing to disclose community assets on her declaration of assets and debts or by transferring community assets without Phillips’s knowledge as grounds for reversing the judgment.

IV. Other Rulings

Phillips challenges various allegedly erroneous rulings by the trial court, including the failure to sanction Carvalho for failing to give Phillips notice of her request to continue the initial July 24, 2008 trial date; failure to sanction Carvalho’s late service of a witness list; failure to enforce a document subpoena served on Carvalho; and failure to enforce subpoenas served on Carvalho’s stepfather, Jose Carlos Dorea, her mother, Vanda Borges, and her employer Jay Grossman (Grossman), to appear and produce documents at trial. We review all of these challenges under the abuse of discretion standard. (*Union Bank of California v. Superior Court* (2005) 130 Cal.App.4th 378, 388.) As we discuss, the record discloses no abuse of discretion by the trial court.

A. Sanctions

Phillips has failed to demonstrate how the trial court abused its discretion by declining to impose sanctions on Carvalho for not giving him notice of her request to continue the trial date. Although Phillips maintains that an order imposing such sanctions was issued but never enforced, the record contains no such order. An order to show cause re: sanctions was issued on July 24, 2008, and set for hearing on September 22,

2008. There is no evidence that sanctions were imposed on Carvalho at the September 22, 2008 hearing.

B. Service of Witness List

Phillips contends that Carvalho's service of the witness list seven days before the trial precluded him from preparing his cross-examination of a witness named "Fernanda," thereby denying him his due process right to confront an adverse witness. No witness named Fernanda testified at trial. Three witnesses testified on Carvalho's behalf: Kathleen Corey, Vanda Borges, and Carvalho herself. Phillips had the opportunity to cross-examine these witnesses at trial. No due process violation occurred.

C. Enforcement of Notice to Produce Documents

Phillips claims the trial court erred by not requiring Carvalho to produce certain documents pertaining to her immigration status in response to a notice to appear and produce documents Phillips served on her before the trial. According to Phillips, the trial court sustained Carvalho's objections to the notice to produce on the ground that it was not an immigration court. He claims he was prejudiced by that ruling because it impaired his ability to prove Carvalho's fraudulent intent to enter into the marriage for the purpose of obtaining a green card.

The record discloses no abuse of discretion by the trial court, and Phillips has failed to establish any miscarriage of justice. The marriage has been dissolved and both parties have been returned to their premarital status.

D. Enforcement of Subpoenas

Phillips claims the trial court erred by failing to enforce trial subpoenas he served on Carvalho's mother and stepfather. Those subpoenas were not properly issued. A party appearing in pro. per. must obtain a subpoena signed and sealed by an issuing court. Code of Civil Procedure section 1985, subdivision (c) states: "The clerk, or a judge, shall issue a subpoena or subpoena duces tecum signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena to require attendance before the court in which the action or proceeding is pending or at the trial of

an issue therein, or upon the taking of a deposition in an action or proceeding pending therein; the subpoena in such a case need not be sealed.” Phillips was not an attorney, and he failed to obtain a properly issued subpoena. The trial court’s nonenforcement of subpoenas that were never issued was not reversible error.

E. Enforcement of Request for Income and Benefit Information from Employer

Phillips contends the trial court erred by not requiring Carvalho’s employer, Grossman, to respond to a request for income and benefit information pursuant to Family Code section 3664. The form request served on Grossman was not applicable, as it governed requests for information following, not preceding, a judgment of dissolution of marriage or legal separation of the parties. (§ 3664, subd. (a).) Moreover, the form itself states on its face that compliance with the request is voluntary absent a court order, and there is no evidence in the record that Phillips obtained such an order. (See § 3664, subd. (f).) Grossman declined to produce the requested information, and the trial court did not err by not compelling him to do so.

F. Failure to Forward Notice of Appeal

Phillips contends the clerk of the superior court did not promptly send a copy of his notice of appeal to this court, in violation of California Rules of Court, rule 8.121(c).⁴ Phillips claims there was a three-month delay between the filing of his notice of appeal on January 6, 2009, and the time it was received by the clerk of this court, and that he was prejudiced by that delay. He fails to explain, however, how he was prejudiced and why he is entitled to a reversal of the judgment. Given the absence of reasoned argument and citation to authority, we treat the argument as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 781-785.)

⁴ California Rules of Court, rule 8.121(c) states: “The clerk must promptly send the reviewing court a copy of any notice filed under this rule.”

DISPOSITION

The judgment is affirmed. Carvalho is awarded her costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST